



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

September 9, 2010

CHAN

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Joycetta Ray**
Tax Registry No. 935570
Patrol Borough Brooklyn North
Disciplinary Case Nos. 83339/07 and 84775/08

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on March 11, 2010 and was charged with the following:

DISCIPLINARY CASE NO. 83339/07

1. Said Police Officer Joycetta Ray, on September 13, 2006, while on duty and at the Applicant Processing Division of the New York City Police Department did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Police Officer, provided APD personnel with inaccurate information when asked whether she resides with or ever resided with any person who has a criminal record or any person who has been arrested, respondent stated "No" when in fact she did reside with an individual who had a criminal record.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT - PROHIBITED CONDUCT - GENERAL REGULATIONS

2. Said Police Officer Joycetta Ray, on September 21, 2006, while on duty and at the Applicant Processing Division of the New York City Police Department did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Police Officer, provided APD personnel with inaccurate information when she indicated to APD that she resided at [REDACTED] [REDACTED], and subsequently informed APD on October 11, 2006, that she actually resided at [REDACTED].

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT - PROHIBITED CONDUCT - GENERAL REGULATIONS

3. Said Police Officer Joycetta Ray, on October 2, 2006, while off-duty, at the Atlantic Avenue Mall, in Kings County, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Police Officer, engaged in a verbal altercation with a civilian, identity unknown to the Department, and stated to said civilian, in sum and substance, "THE TOW FEE IS NOT A DETERRENT TO ME PARKING THERE AND MY BOYS ARE COMING BACK TO HURT YOU."

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT - PROHIBITED CONDUCT - GENERAL REGULATIONS

NYS PENAL LAW SECTION 240.26 (1) – HARASSMENT IN THE SECOND DEGREE

**POLICE OFFICER JOYCETTA RAY
DISCIPLINARY CASE NOs. 83339/07 AND 84775/08**

DISCIPLINARY CASE NO. 84775/08

1. Said Police Officer Joycetta Ray, while assigned to the 84th precinct, on or about February 22, 2008, while off-duty, in or about the Nassau Coliseum, Nassau County, New York, having been directed repeatedly by New York City Police Department Lieutenant Hector Berdecia, to relinquish her Department identification card immediately to him, wrongfully did fail and neglect to comply with said direction. *(As amended)*

P.G. 203-03, Page 1, Paragraph 2

**COMPLIANCE WITH ORDERS
GENERAL REGULATIONS**

In a Memorandum dated June 2, 2010, Assistant Deputy Commissioner Vinal accepted the Respondent's Pleading Guilty to Specification Nos. 1 and 2, and found the Respondent Not Guilty of Specification No. 3 in Disciplinary Case No. 83339/07. Further, the Respondent was found Guilty of Specification No. 1 in Disciplinary Case No. 84775/08. Having read the Memorandum and analyzed the facts of these matters, I approve the findings, but disapprove the recommended penalty.

The totality of the Respondent's actions and misconduct in these matters merits a greater disciplinary penalty than was recommended. As such, Respondent Ray is to be suspended without pay for 15 days, and is to also forfeit 30 Vacation days.



Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

The
City of
New York

June 2, 2010

MEMORANDUM FOR: Police Commissioner

RE: Police Officer Joycetta Ray
Tax Registry Number 935570
Patrol Borough Brooklyn North
Disciplinary Case Nos. 83339/07 & 84775/08

The above-named member of the Department appeared before me on March 11, 2010, charged with the following:

Disciplinary Case No. 83339/07

1. Said Police Officer Joycetta Ray, on September 13, 2006, while on duty and at the Applicant Processing Division of the New York City Police Department did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Police Officer, provided APD personnel with inaccurate information when asked whether she resides with or ever resided with any person who has a criminal record or any person who has been arrested, respondent stated "No" when in fact she did reside with an individual who had a criminal record.

P.G. 203-10 Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT GENERAL REGULATIONS

2. Said Police Officer Joycetta Ray, on September 21, 2006, while on duty and at the Applicant Processing Division of the New York City Police Department did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Police Officer, provided APD personnel with inaccurate information when she indicated to APD that she resided at [REDACTED] [REDACTED] and subsequently informed APD on October 11, 2006, that she actually resided at [REDACTED].

P.G. 203-10 Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT GENERAL REGULATIONS

3. Said Police Officer Joycetta Ray, on October 2, 2006, while off-duty, at the Atlantic Avenue Mall, in Kings County, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Police Officer, engaged in a verbal altercation with a civilian, identity known to the Department, and stated to said civilian, in sum and substance, "THE TOW FEE IS NOT A DETERRENT TO ME PARKING THERE AND MY BOYS ARE COMING BACK TO HURT YOU."

P.G. 203-10 Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED CONDUCT GENERAL REGULATIONS
NYS PENAL LAW SECTION 240.26(1) HARASSMENT IN THE SECOND DEGREE

Disciplinary Case No. 84775/08

1. Said Police Officer Joycetta Ray, while assigned to the 84th Precinct, on or about February 22, 2008, while off-duty, in or about the Nassau Coliseum, Nassau County, New York, having been directed repeatedly by New York City Police Department Lieutenant Hector Berdecia, to relinquish her Department identification card immediately to him, wrongfully did fail and neglect to comply with said direction. (*As amended*)

P.G. 203-03 Page 1, Paragraph 2 COMPLIANCE WITH ORDERS
GENERAL REGULATIONS

The Department was represented by David Green, Esq., Department Advocate's Office, and the Respondent was represented by John Tynan, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 83339/07

The Respondent, having pleaded guilty, is found Guilty of Specification Nos. 1 and 2. The Respondent is found Not Guilty of Specification No. 3.

Disciplinary Case No. 84775/08

The Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Lieutenant Hector Berdecia as a witness and offered the statement of Stephen Scales.

Lieutenant Hector Berdecia

Lieutenant Hector Berdecia, who was promoted to Lieutenant in 2003 and who is assigned to the Housing Bureau, testified that he is involved in gathering intelligence information regarding gangs in Brooklyn and monitoring gang activity. He recalled that the Nassau County Police Department (NCPD) requested that the New York City Police Department provide a detail of officers who were familiar with gangs and gang members to be present at a concert that was to be held on February 22, 2008 at the Nassau Coliseum, Nassau County, New York (the Coliseum). Lieutenant Berdecia was assigned to this detail along with 27 other members of the service (MOS).

On February 22, 2008, Lieutenant Berdecia and other MOS assigned to the detail were inside the arena dressed in plainclothes. Lieutenant Berdecia recalled that he was wearing a sweater and jeans. NCPD officers requested that MOS assigned to the detail come to the backstage area because a quantity of marihuana had been discovered there and the NCPD officers needed assistance identifying individuals who were present in the backstage area.

When Lieutenant Berdecia arrived at the backstage area, he recognized one of the men being questioned, who had no identification on him, as "████████," an individual who was involved with a gang operating with the confines of the 81 Precinct. "████████ told Lieutenant Berdecia that he had nothing to do with the marihuana that had been found and that the reason he was present in the backstage area was because he had come to the concert with one of the performers, his brother █████ (████), a "rapper" whose stage name was "Fabulous," and with a female New York City Police Officer. █████ told Lieutenant Berdecia that the police officer was no longer present backstage but that "she can verify who I am." "████████ called █████ on his cell phone and █████ came backstage and confirmed that "████████" was his brother. █████ then left "to look for his wife."

NCPD officers left the backstage area and followed █████ when he entered the general seating area of the Coliseum. These officers radioed Lieutenant Berdecia and told him that █████ was in the audience "with his wife." When Lieutenant Berdecia responded to the location, the NCPD officers told him that █████ told them that "his wife" was a police officer and that she could verify the identity of his brother.

Lieutenant Berdecia testified that when he approached the Respondent his Department shield was visible and attached to a chain around his neck and that as he walked toward the Respondent he displayed his Department ID by holding it in front of him.

After he identified himself to the Respondent, she reacted with surprise and exclaimed, "My kids, my kids, who's going to feed my kids!" He testified that he ordered the Respondent "more than ten times" to show him her Department ID over a five minute span.

Only after he told the NCPD officers to give him a pair of handcuffs and stated that he was going to arrest the Respondent for impersonating a police officer, did she finally state, "You can't arrest me because I am a police officer." He then told her, "I am ordering you to give me your identification otherwise we are putting you in handcuffs." She then showed him her Department ID card. He wrote her information down and then told her, "All you had to do was show your ID card and it would have been all over." He described her as "screaming uncontrollably, crying and saying, 'Who's going to feed my kids! I don't know those guys! I don't know who they are! I know them from the neighborhood!'" She then calmed down, sat down and talked with [REDACTED]. When the concert was over, he saw the Respondent leave the parking lot in a car with [REDACTED] and [REDACTED].

On cross-examination, Lieutenant Berdecia testified that when he threatened that he was going to arrest the Respondent for impersonating a police officer, he did not believe that she was really a police officer because she had not produced her ID. The Respondent never referred to [REDACTED] as her husband, but [REDACTED] claimed to be her "common law husband." Lieutenant Berdecia confirmed that the Respondent was not part of any gang and that he did not see the Respondent do anything wrong at the concert.

He also confirmed that after his interaction with the Respondent he recommended that she be drug tested for cause because her highly emotional behavior when he approached her was irrational. He was not surprised that she tested negative. He admitted that he failed to follow a Patrol Guide procedure in that he did not call the Medical Division even though he believed that the Respondent was acting irrationally.

Two MOS assigned to the detail were present with him when he told the Respondent, "I am ordering you to show me your ID card," as he, at the same time, held his own ID card "in her face" to show her that he was an NYPD lieutenant not a NCPD lieutenant. [REDACTED] and [REDACTED] were involved with a gang called "Street Family" that operated out of a housing development in the 81 Precinct. He did not suspend the Respondent instead he called the IAB action desk and reported the Respondent's failure to immediately identify herself to him after he returned to his office.

Statement of [REDACTED]

[REDACTED] [REDACTED] was interviewed by Department investigators and gave the following statement:

On October 2, 2006, [REDACTED] was working as a security guard at the Atlantic Avenue Mall (the mall). One of his jobs was to insure that shoppers did not park their cars in an area that was limited only to customers who were picking up merchandise that they had just purchased at the Target store in the mall. When he saw the Respondent pull her car over in this area, he told her that she could not park there because it was a restricted area. He recalled that "she had her music blasting and she had like some kind of, her windows are tinted. So I knocked on the door politely, excuse me miss you know, explained to her politely and she ignored me...when I said it again she gets out of the car and...she puts some kind of a...police validation in...her front window."

The Respondent told him, "You know I'm a cop, you can't tow my shit," or words to that effect. [REDACTED] felt that she was "getting an attitude with me." Even though

he again told her that she could not park there, she ignored him, exited her car and entered a store.

[REDACTED] supervisor "Miss [REDACTED]" asked him, "What's going on? Why is that lady parked there?" When [REDACTED] told her that the Respondent had refused to listen to him, [REDACTED] called the tow truck. When the tow truck arrived, the driver hooked the car up to the tow truck and towed it out of the restricted area.

About five minutes later, the Respondent exited the mall and asked [REDACTED] "Where's my car?" When he told her that it had been towed, she asked him, "Why did my car get towed?" [REDACTED] stated that she cursed at him although "it happened so fast that I didn't catch all of the words" but that she uttered "a bunch of profanity like why the fuck is my car towed and stuff like that." He tried to remain calm and told her, "I didn't get your car towed. My supervisor had it towed because you was in the wrong lane." She then "gets mad and walks away."

The tow truck driver was still in the area so the Respondent went over to the truck driver, "she pays her little fine," and the tow truck driver unhooked her car. When [REDACTED] walked by her, she looked at him and said, "Yeah, yeah, yeah, you know this is nothing. My money is long," meaning she could afford the fine because she has money. She also told him, "This is nothing to me," and she brushed her shoulders to indicate that she would do it again.

He told her. "Miss, you know if you keep on, you know, going against the regulations after awhile it's gonna hurt your pocket." She told him, "The only man that's going to be hurting is you." [REDACTED] "didn't jump to any conclusion." He said, "Miss, what did you say?" She replied, "The only one that's going to be hurt is you. Watch.

What time do you get off?" He told her, "Don't worry about what time I get done. It's none of your business. She replied, "Watch, watch, watch when them boys come back for you...watch what time you get off." Since he felt that she threatening him, he asked, "Are you serious Miss?" She replied, "Watch, you think I'm playing or whatever." He told her, "You know what Miss, I'm here all day you know so whatever you have to do, just go about your business."

After she drove off he decided "I'm not going to let this slide whatever, so I went into the office" and he "wrote a little incident report" because "I'm not going to have nobody directly threaten me and my life."

About 30 minutes later, he left the office and was walking back to his post when "some guy" came up to him, put his hand on his shoulder and told him, "'You got my wife's car towed' or something like that." Since the man was alone, [REDACTED] asked him, "Who's your wife?" The man described his wife's car and [REDACTED] told him "she parked in the wrong spot so it got towed." The man then told him, "I don't give a fuck...don't have my wife's car towed and then he gets all in my face..."

When [REDACTED] "put it on the radio," the man "puts his hands up, he's coming towards me." [REDACTED] stated that, I'm not going to sit there and get hit in the face or whatever, so I put my hands up to defend myself." As the two men were shadow boxing, the man told him, "I'm going to fuck you up." [REDACTED] "lost it" and told his "command" to "get this man...before I fuck him up, before I lay his ass out. And after that, 'cause he threw his hands so I threw my hands and then after that basically it was, basically he when he flinched this way, I flinched back and like he, he flexed his back, like he jumped

back and talked a little, proceeded to talk his way out of it. And then he was like oh, watch, watch. I be back, I be back."

[REDACTED] boss spoke to the man and then [REDACTED] father spoke to the man. The man stated that his wife had told him that [REDACTED] had been flirting with her. [REDACTED] stated that he was not flirting with her.

The Respondent's Case

The Respondent testified on her own behalf.

The Respondent

With regard to Disciplinary Case No. 83339/07, the Respondent admitted that on September 13, 2006, she provided Applicant Processing Division (APD) personnel with inaccurate information when she was asked whether she had resided with any person who had ever been arrested. She stated "No" when in fact at that time she was residing with [REDACTED] who she knew had an arrest record relating to domestic incidents he had been involved in with his ex-girlfriend.

With regard to Specification No. 2, the Respondent admitted that on September 21, 2006 while she was at APD she provided personnel there with inaccurate information when she indicated that she resided at [REDACTED] when she actually lived with [REDACTED]. The Respondent explained that she told APD personnel that she resided at [REDACTED], which was her [REDACTED] address, because she had arranged with [REDACTED] to receive her mail there.

She testified that she did this because she "did not get along with" with [REDACTED]'s ex-girlfriend who also resided at [REDACTED] and because she knew that some of the other residents [REDACTED] were "bad people." She was concerned that if [REDACTED]'s ex-girlfriend or other residents saw that she was receiving mail from the Department they would discover that she was a police officer and cause trouble for her. She noted that [REDACTED] and [REDACTED] are both located within the confines of the [REDACTED] Precinct and that her [REDACTED] residence at [REDACTED] was nearby, only "one block over and three blocks up" from [REDACTED]. She informed APD on October 11, 2006, that she actually resided at [REDACTED] not at [REDACTED].

With regard to Specification No. 3, the Respondent acknowledged that on October 2, 2006, she drove her personal car to the mall. Because her [REDACTED] [REDACTED] was with her and because she needed to enter the Pathmark store there briefly just to purchase food for their dinner, she parked in a restricted area in front of the Target store. The Respondent placed her Department parking plaque on the dashboard of her car. [REDACTED] approached her car. She told him that she knew it was a restricted parking zone but that she need to run into Pathmark really quick and that she would be right out. He told her, "Okay beautiful." Because he had started flirting with her, she believed that he would allow her to leave her car there briefly. When she came out of the Pathmark less than ten minutes later, her car was gone. When [REDACTED] told her that it had been towed away, she was upset and she told him, "Because you couldn't get my (telephone) number you had my car towed." She never threatened [REDACTED] and never told him that "my boys" would be coming back to hurt him. She testified that [REDACTED] never screamed at her or

cursed at her. She saw the tow truck nearby and approached the driver. The driver agreed to release her car if she paid the tow pick up fee. She did so and the driver unhooked her car. When she arrived home, she told [REDACTED] that [REDACTED] had her car towed because he had flirted with her and she had not reciprocated.

With regard to Disciplinary Case No. 84775/08, the Respondent acknowledged that on February 22, 2008, she went to the Coliseum with [REDACTED], who she was “seeing at the time,” because he was performing there that night. He drove and brought along a friend who [REDACTED] referred to as “[REDACTED].” Because [REDACTED] was a performer, they were admitted backstage. She did not see any uniformed police officers there, only security guards. As she was walking with [REDACTED] towards his dressing room, she heard someone say “Joyce” and then say that “IAB will be calling.” She turned around and was approached by four men in plainclothes who did not have any shields displayed. Because of “the mention of IAB” she “thought that maybe they may have something to do with the Police Department.” They asked her if she was a police officer. When she responded in the affirmative, they requested that she show them her ID. She requested that they show her their IDs because she did not think that NYPD officers would be working at the Coliseum since it was located outside of New York City. When one of men told her that he did not have to show her anything, she told him that the conversation was over and she walked away towards the arena seating area.

As she was walking up stairs, she was approached by a man in plainclothes who did not have a shield displayed. He began yelling at her, “Show me your ID! Are you a police officer?” The Respondent testified that she asked to see his ID card. When he threatened to have her arrested for impersonating a police officer, she told him that she

was a police officer. The man pulled out a card and raised his hand to display it to her but because his forefinger covered "most" of the ID she asked him to "remove your hand" so that she could see it again. He took his ID out again and this time he displayed it to her "the correct way." She then showed him her own ID. He told her "follow me" and escorted her to an office. She told him, "I can't lose my job over this." She testified that she was referring to the fact that she had been present in the backstage area.

FINDINGS AND ANALYSIS

Disciplinary Case No. 83339/07

Specification Nos. 1 and 2

The Respondent, having pleaded guilty, is found Guilty of Specification Nos. 1 and 2.

Specification No. 3

It is charged that on October 2, 2006, the Respondent wrongfully engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by engaging in a verbal altercation with [REDACTED] during which she told him, in sum and substance, "the tow fee is not a deterrent to me parking there and my boys are coming back to hurt you."

The only evidence offered by the Department that the Respondent made the quoted remarks was the statement of [REDACTED] which was offered as hearsay at this trial. I cannot concur with the Assistant Department Advocate's (the Advocate) position that

[REDACTED]' hearsay claims constitute sufficient evidence for the Department to meet its burden of proving the Respondent guilty by a preponderance of the credible evidence.

Appellate decisions which have consistently held that although hearsay is admissible in administrative proceedings and although a disciplinary finding may rest upon hearsay alone, hearsay declarations are insufficient to support findings of guilt in cases that pose close questions of credibility¹ and that the more central the hearsay is to the agency's case, the more serious the question of basic fairness and the more critical the question of reliability may become,² because the complainant's failure to testify makes it impossible for the trier of fact to observe testimonial demeanor and assess the credibility of an account that has been tested under cross-examination.

Here, the credibility of [REDACTED]' statements regarding what that the Respondent supposedly said to him must be examined in light of [REDACTED]' admission to Department investigators that he developed an immediate dislike for the Respondent. He stated that as soon as he told her that she could not park her car in the restricted area, he immediately felt that she was "getting an attitude with me." I can only conclude that [REDACTED] dislike for the Respondent increased when she ignored his warning, got out of her car and entered a store.

Also, the record shows that [REDACTED] had a motive to lie about what the Respondent had said to him because she had accused him of trying to "hit on" her. In his statement, [REDACTED] corroborated the Respondent's testimony that she had accused him of arranging to have her car immediately towed away because she had rejected his flirtatious advances.

¹ People Ex. Rel Vega v. Smith, 66 N.Y.2d 130 (1982); Eppler v. Van Alstyne, 93 A.D.2d 930 (3rd Dep't 1983).

² Calhoun v. Bailar, 626 F. 2d 145 (9th Cir.1980), cert. denied, 452 U.S. 906 (1981).

As a result, I find that [REDACTED] hearsay statement cannot be sufficiently relied upon to prove that the Respondent made the remarks he attributed to her.

I would further note that, as to that part of the charge that alleges that, in sum and substance, the Respondent told [REDACTED], "the tow fee is not a deterrent to me parking there," the transcript of [REDACTED] statement (DX 1) shows that he never accused the Respondent of uttering the quoted remark and that his conclusion that she had expressed this sentiment was based largely on his own interpretation of her remarks and gestures.

[REDACTED] stated that the Respondent told him, "My money is long." [REDACTED] told his interviewers that he interpreted this remark to mean she could afford the fine because she has money. [REDACTED] also told his interviewers that when the Respondent told him, "This is nothing to me" and "brushed her shoulders," he interpreted this remark and this gesture to mean that she would park in the restricted area again.

As to that part of the charge that alleges that, in sum and substance, the Respondent told [REDACTED], "My boys are coming back to hurt you." [REDACTED] statement indicates that he never accused the Respondent of uttering the phrase "my boys" (only the phrase "them boys") and that he never accused the Respondent of combining the phrase "boys are coming back" with the word "hurt." [REDACTED] told his interviewers that after he decided to lecture the Respondent by telling her that if she kept on "going against the regulations after awhile it's gonna hurt your pocket," she responded to this comment by stating, "The only one that's going to be hurt is you. Watch. What time do you get off?" and that she also told him, "Watch when them boys come back for you..."

The Advocate argued that [REDACTED]'s hearsay claim that the Respondent had threatened him is sufficiently corroborated by the fact that [REDACTED] later confronted

The Advocate further argued that [REDACTED]'s action proved not only that the Respondent had told [REDACTED] "My boys are coming back to hurt you," but it also proved that the Respondent had directed [REDACTED] to attack [REDACTED]. During the Advocate's closing argument, he was asked whether he was implying that [REDACTED] had tried to start a physical fight with [REDACTED] because the Respondent had directed [REDACTED] to do this. The Advocate answered, "Precisely." However, the Respondent is not charged here with having directed [REDACTED] to go and beat up [REDACTED].

I find that the fact that [REDACTED] confronted [REDACTED] constitutes insufficient corroboration of [REDACTED]'s claim that the Respondent had threatened him because the Respondent testified that she told [REDACTED] that [REDACTED] had her car towed because he had flirted with her and she had not reciprocated by giving [REDACTED] her telephone number.

The believability of the Respondent's version of her interaction with [REDACTED] is enhanced by the fact that she admitted that he was justified in telling her to move her car because she had pulled over and stopped in a restricted parking area and because she testified that [REDACTED] never screamed at her or directed any profanity at her. If the Respondent was creating a false version of events to make [REDACTED] bad, it is likely that she would have accused him of screaming and cursing at her.

The Respondent is found Not Guilty of Specification No. 3.

Disciplinary Case No. 84775/08

It is charged that the Respondent failed to comply with Lieutenant Berdecia's repeated directions to immediately relinquish her Department Identification card to him. I find the Respondent guilty based mainly on her own testimony.

The Respondent acknowledged that while she was with [REDACTED] she heard someone call out her first name and say "IAB will be calling." Although the Respondent was only willing to admit that she had surmised that because "they made a mention of IAB" she "thought that maybe they may have something to do with the Police Department," I find that the fact that one of the men had recognized her and had used the acronym IAB, led her to conclude that these men were NYPD officers, not NCPD officers. Also, although she asserted that she did not think that NYPD officers would be working at the Coliseum since it was in Nassau County, the fact that these officers were in an area that was not open to the public and the fact that they asked to see her ID alerted her that they were on duty NYPD officers.

Despite these facts, when they requested to see her ID, she did not show it to them. Since she had rejected their request that she show them her ID, she should have anticipated that they would report her refusal to their supervisor, as they in fact did. Based on these facts, I cannot adopt, or even sympathize with, her position that she had the right to assume that the man who confronted her soon afterwards was not an NYPD supervisor. On the contrary, her testimony that Lieutenant Berdecia exuded authority, demanded to know whether she was a police officer and demanded to see her ID, would have led a reasonable person to assume that he was a NYPD supervisor.

I credit Lieutenant Berdecia's testimony that he told her he was a lieutenant since it would have been logical for him to immediately inform her that he was a supervisor. The Respondent admitted that Lieutenant Berdecia raised his hand to display his ID to her. However, she asserted that because his forefinger covered "most" of the ID she decided that he had not, to her satisfaction, established that he was a superior officer

employed by this Department. So she made the lieutenant take his ID out of his pocket again and display it to her a second time "the correct way." Only then did she produce her own ID. Since the Respondent implicitly acknowledged that when Lieutenant Berdecia first displayed his ID to her she was able to see at least part of his ID card, she should have been able to at least ascertain that it appeared to a Department ID and she should have concluded that he was who he said he was, a lieutenant with this Department.

Based on the Respondent's admission that she told Lieutenant Berdecia that she was a police officer only after he threatened to have her arrested for impersonating one, I can only conclude that she did not want to show him her ID and identify herself to him as an MOS and the excuses she offered for why she did not promptly do so are not convincing.

The Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

The Respondent was appointed to the Department on July 1, 2004. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent, by pleading guilty, admitted that on two occasions during September, 2006, she engaged in conduct prejudicial to the good order, efficiency and discipline of the Department by providing inaccurate information to the Department's Applicant Processing Division (APD). She acknowledged that on September 13, 2006,

she answered "no" after she was asked by APD personnel whether she resided with a person who has a criminal record when in fact she resided with [REDACTED] who she knew had a criminal record. She also acknowledged that eight days later she indicated to APD that she resided at [REDACTED], when she was actually residing at [REDACTED] [REDACTED]. As the wording of this latter charge indicates, the Respondent corrected her inaccuracy by informing APD on October 11, 2006, 20 days later, that she actually resided at [REDACTED]. The fact that the Respondent informed APD about this inaccuracy constitutes a mitigating factor that should be considered in fashioning a penalty regarding this misconduct. Also, the fact that the Respondent pleaded guilty and admitted her misconduct constitutes a mitigating factor regarding the penalty to be imposed on her regarding this misconduct.

The Respondent has also been found guilty of failing to comply with Lieutenant Berdecia's repeated directions to immediately relinquish her Department Identification Card to him. Although these two sets of unrelated disciplinary charges were tried together, I take note of the fact that the Respondent's off-duty misconduct of failing to comply with Lieutenant Berdecia's direction took place 17 months after her on-duty misconduct at APD.

The Advocate recommended that the Respondent forfeit 45 vacation days and that she be placed on dismissal probation for one year. Since the Respondent has been found not guilty of one of the instant charges, and taking into consideration her performance

evaluations and her lack of a prior disciplinary record, a period on dismissal probation does not appear to be warranted.

It is recommended that the Respondent forfeit 30 vacation days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner - Trials

